such appeals to the High Court shall be the same as for appeals to the High Court from decisions of the Sessions Court.

The argument is that any question of extending time and any question of prescribing time within which steps must be taken is a matter of procedure. Accordingly by reason of the provisions in the Subordinate Courts Rules and in the High Court Rules there is power to extend time of the nature involved in this case.

In my view there is a fallacy in that argument. The argument considered in isolation has much force. It ignores, however, the consideration that sub-section (3) can have no application until there are some proceedings of some sort in the High Court and that the only way in which such proceedings can be commenced within the ambit of the statute (of course I am not overlooking the question of *certiorari* and so forth) is by bringing an appeal and there the wheel comes round to its starting point. The appeal must be brought within fourteen days.

In all the circumstances I am compelled to the view that the appeal should be allowed with costs.

Barakbah C.J. and **Tan Ah Tah J.** concurred.

Appeal allowed.

Solicitors: *Arulanandom & Co.*; *N. Sharma.*

LING NGAN LIONG v. PUBLIC PROSECUTOR

[F.C. (Thomson L.P., Barakbah C.J. and Tan Ah Tah J.) December 5, 1963]

[Ipoh — Federal Court Criminal Appeal No. 1 of 1963]

Penal Code, ss.375, 376—Charge of rape by medical practitioner—Trial judge finding evidence of complainant completely unreliable—Accused paying compensation to complainant's family—Trial judge convicting accused by relying on conduct of accused after incident—Whether proper.

The accused, a medical practitioner was charged of rape of one of his patients, aged 13. The trial judge in his grounds of judgment stated that if the complainant's evidence alone were the evidence on which he could make a finding in the case he would have no hesitation in holding that the complainant's evidence was completely unreliable. The learned trial judge then dealt with what he referred to as "extraneous evidence" relating to the conduct of the appellant after the alleged offence in handing over three cheques totalling $10,000 which were to be paid to the complainant's family, and on this evidence convicted the accused under section 376 of the Penal Code and sentenced him to 3 years imprisonment. On appeal against conviction and sentence the appellant stated in evidence that he was prepared to make the payments because (a) he wanted to avoid publicity of a trial which would ruin his practice (b) there was a threat of personal injury to him.

Held: as the complainant's evidence was in effect found to be completely unreliable, it was not safe to rely on the conduct of the appellant after the alleged incident in order to reach the conclusion that he was guilty of the offence of which he was charged.

FEDERAL COURT CRIMINAL APPEAL.

David Marshall (*G. Abisheganaden* with him) for the appellant.

Mohamed bin Yaacob (Deputy Public Prosecutor) for the respondent.

Tan Ah Tah J.: The appellant was tried in the High Court at Ipoh on the following charge:—

"That you, on the 9th day of April, 1963 at about 11 a.m. at a house No. 18, Back Street, Kampong Koh, Sitiawan in district of Dindings in the State of Perak, committed rape on Ling Shew Ching, and thereby committed an offence punishable under section 376 of the Penal Code."

He was found guilty and convicted and sentenced to three years' imprisonment. He now appeals against the conviction and sentence.

The appellant is a medical practitioner in private practice and has a clinic at Kampong Koh. At the time of the alleged offence the complainant was a young girl aged 13. On the 8th April 1963 the complainant's mother took her to see the appellant at his clinic because the complainant had a headache and stomach-ache. When the complainant was seen by the appellant, the latter was informed that she had a white discharge from her vagina. The complainant was taken to an examination cubicle and there the appellant examined various parts of her body including her neck, chest and abdomen. During the examination he palpated her breasts. Finally, he examined her vagina by placing his left hand on her abdomen and putting one gloved finger of his right hand into her vagina. The nurse employed at the clinic then gave the complainant an injection. The appellant prescribed some medicine which was duly prepared and taken away by the complainant when she left the clinic with her mother.

On the 9th April 1963, as the complainant had not recovered from her illness, she went again to the appellant's clinic, accompanied by her mother. The appellant was informed that the complainant still had a headache and was suffering from a slight abdominal pain and a feeling of nausea when taking food. The complainant was taken to the same examination cubicle where she was examined by the appellant. During the course of this examination the appellant again palpated her breasts. Up to this point the facts which have been set forth are substantially those which were stated in evidence both by the complainant and the appellant.

Before proceeding to deal with the allegation that the appellant committed rape on the complainant, it is convenient to refer to one matter of which evidence was given by the appellant but not by the complainant. The appellant stated that on the occasion of the complainant's second visit to his clinic he examined her vagina with the assistance of his nurse, using the same method which he had employed on her

first visit. According to the appellant, the symptoms described could be attributed to pregnancy, and part of the examination carried out by him was directed to discover whether the complainant was pregnant.

According to the complainant it was during this second visit that the appellant committed the offence with which he was charged. The complainant's evidence was to the effect that after the nurse had left the cubicle, the appellant made her lie down crosswise on the bed and had sexual intercourse with her.

Counsel for the appellant has demonstrated to this court that having regard to the width of the bed it was virtually impossible for the appellant to have committed the act in the way described by the complainant. As to the complainant's evidence the record shows that she contradicted herself on numerous occasions. In the circumstances, it is not surprising that in his grounds of judgment the learned trial judge stated that if the complainant's evidence alone were the evidence on which he could make a finding in the case he would have no hesitation in holding that the complainant's evidence was completely unreliable.

Having in effect found that the complainant's evidence was completely unreliable, the learned trial judge in later passages of his grounds of judgment deals with what he refers to as extraneous evidence relating to the conduct of the appellant after the complainant's second visit to his clinic. The record shows that as a result of what the complainant told her mother, the complainant's parents and her brother went to see the appellant at various times in order to complain about his behaviour towards her. The Chairman of the Kampong Koh Local Council was brought into the matter. After several discussions, the last of which took place after 8.30 p.m. on the 9th April 1963, the appellant agreed to pay the sum of $10,000 to the complainant's family. He drew three cheques, the first of which was for $4,000, the second for $3,000 and the third for $3,000. All these cheques were handed to the Chairman. During the discussions with the appellant, mention had been made of the fact that the complainant's brother was a man who was capable of resorting to violence to attain his ends. According to the Chairman, the appellant was prepared to pay the sum of $10,000 as compensation for the wrong he had done to the complainant. However, the appellant stated in evidence that he was prepared to make the payment for two reasons: first, because he wanted to avoid the publicity of a trial which would ruin his practice and secondly, because there was a threat of personal injury to him.

It cannot be doubted that when a medical practitioner has to stand trial on a charge of raping his patient, whether the charge be true or false, the attendant publicity may ruin his reputation and his practice. A medical practitioner may prefer to pay a sum of money, even though he has been falsely accused of rape, rather than face the ordeal and publicity of a trial. When the appellant handed the three cheques to the Chairman of the Local Council, he was doing what may be described as an equivocal act, which was capable of more than one interpretation. It may well be that he handed the cheques over in order to avoid publicity and the danger of having violence done to his person. Having regard to the fact that the complainant's evidence was in effect found to be completely unreliable, we are of the view that it was not safe to rely on the conduct of the appellant after the alleged incident in his clinic in order to reach the conclusion that he was guilty of the offence with which he was charged.

The complainant was a young girl who had just reached the age of puberty. It is not improbable that she was sexually stimulated as a result of the palpation of her breasts and the examination of her vagina. When the numerous contradictions in her evidence are considered it is difficult to resist the conclusion that an element of fantasy has crept into her version of the incident.

For the reasons which we have stated, the appeal is allowed. The conviction is quashed and the sentence set aside.

Appeal allowed.

Solicitors: *Abishegan-Naden & Co.*

TEAY WAH CHEONG v. PUBLIC PROSECUTOR

[A.Cr.J. (Hashim J.) December 8, 1963]

[Kuala Trengganu — Criminal Appeal No. 11 of 1963]

Penal Code, s.304A—Causing death by rash or negligent act—Report by medical officer—Identity of deceased —Identity to be conclusively proved—High degree of negligence necessary.

Criminal Procedure—Part heard case—Continuance by new President of Sessions Court—Risk in such continuance—Criminal Procedure Code (Cap. 6), s.261

In order to sustain a conviction under section 304A of the Penal Code in the case of a road accident, the prosecution must conclusively prove the identity of the deceased person and that the accused acted with a high degree of negligence. A mere error of judgment on the part of the accused does not amount to gross negligence.

Observations on the danger of acting under section 261 of the Criminal Procedure Code.

CRIMINAL APPEAL.

Ten Chin Yong for the appellant.

Abdul Hamid bin Haji Omar (Deputy Public Prosecutor) for the respondent.

Hashim J.: The accused was charged under section 304A of the Penal Code. He was found guilty, convicted and sentenced to two weeks imprisonment and fined $500 in default five months